

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:

Chapter 7 Case

SRC Holdings Corporation,
f/k/a Miller & Schroeder, Inc.
and its subsidiaries

BKY Case Nos. 02-40284 to 02-40286

Jointly Administered

Debtor.

Brian F. Leonard, Trustee,

ADV Case No. 03-_____

Plaintiff,

vs.

COMPLAINT

Executive Risk Indemnity, Inc.

Defendant.

Plaintiff Brian F. Leonard, as the Trustee of the bankruptcy estate of the Debtors (hereafter "**Plaintiff**" or "**Trustee**"), by his attorneys, for his Complaint against the above Defendant Executive Risk Indemnity, states and alleges as follows:

JURISDICTION

1. The Debtors commenced their bankruptcy cases under Chapter 7 of the United States Bankruptcy Code on January 22, 2002.
2. Plaintiff is the duly appointed, qualified, and acting Trustee of the above bankruptcy cases.
3. Defendant is a Delaware insurance corporation, with offices at 32 Loockerman Square, Suite L100, Dover, Delaware, is an insurance company, and does business in the State of Minnesota.
4. This is a core proceeding under 28 U.S.C. § 157.

5. This Court has jurisdiction over this adversary proceeding, and this adversary proceeding is authorized under 28 U.S.C. §§ 157 and 1334.

HISTORY OF THE DEBTORS' OPERATIONS

6. Miller & Schroeder, Inc. ("**M&S**") (now SRC Holdings Corporation) was the parent company of several affiliated entities, including those identified in this paragraph. The Debtors operated a financial services business. Its two main operations were conducted by Miller & Schroeder Investments, Inc. ("**MSI**") (now SRC Investments Corporation), which conducted a loan origination and participation sale business, and Miller & Schroeder Financial, Inc. ("**MSF**") (now Securities Resolution Corporation), which operated a municipal bond underwriting and retail brokerage business.

7. MSF, as part of its municipal bond brokerage and underwriting business, was the underwriter for twelve separate municipal bond offerings made from December, 1996 through March, 1999 (collectively referred herein as the "**Heritage Bonds**"). The proceeds of each bond issue were loaned to related borrowers for the purported purpose of financing the acquisition, operation and/or renovation of hospitals and other long-term healthcare facilities. MSF issued a Prospectus in conjunction with each of the Heritage Bond offerings. The Heritage Bond offerings raised a total of approximately \$140,000,000.00. The 12 related bond offerings were financed, structured and marketed by MSF from its Solana Beach, California office.

8. All of the Heritage Bond projects went into default soon after the bonds were sold. None of the projects made a single bond payment. The defaults in the earlier bond projects occurred, and said projects were in distress, at the time later Heritage Bond offerings were made in 1997, and 1998. MSF failed to disclose the defaults and problems in the earlier projects to investors who

purchased later issues in 1997 and 1998. The Prospectuses also contained other material misrepresentations and misstatements, and omitted to provide sufficient information to enable an investor to reasonably and intelligently assess the risk of investing in the Heritage Bonds.

9. The investors and bondholders of the Heritage Bonds filed numerous lawsuits, claims, and arbitration proceedings against the Debtors and many of the Debtors' officers, directors and employees. The investors and bondholders sought to recover their investment losses in the Heritage Bonds. The Debtors expended hundreds of thousands of dollars paying for attorneys' fees in connection with such lawsuits and arbitration proceedings. The Debtors lost each arbitration proceeding that reached conclusion.

10. The litigation resulting from the defaults in the Heritage Bond issues required the Debtors to deplete their cash and assets for the purpose of paying legal expenses in the defense of the actions. Miller and Schroeder, Inc. and its subsidiaries incurred nearly \$2,000,000 in attorney's fees and costs defending the various actions and also were found liable to various customers for millions of dollars in damages.

11. On or about September 4, 2000, Defendant issued a "Directors and Officers Liability Insurance Policy", policy number 8166-6027, ("The Policy") to M & S. The Policy, in addition to providing coverage for officers and directors also provided coverage, for an additional premium, to "The Company" (M&S and its subsidiaries), as defined in The Policy. The Policy provided coverage for, among other things, defense and indemnification of the insureds against covered claims made during the period of coverage.

12. The Policy period was from July 31, 2000 to July 31, 2003. The insured companies included each of the Debtors. The Policy limits were \$5,000,000

13. During the period of The Policy, M & S and its subsidiaries, officers, directors, and

employees, were named as defendants in a number of the lawsuits and other actions described above arising out of the Heritage Bond offerings.

14. Most of the customers who have alleged losses related to the above-referenced bonds have also made claims against the bankruptcy estates of the debtors. These claims greatly exceed the available coverage under The Policy.

15. The Policy expressly provides coverage for the claims made against M & S and against the bankruptcy estate and for the fees and costs associated with defending those claims. It was the insureds' expectation that the claims and fees and costs would be covered under The Policy.

16. Despite a demand for coverage for the losses associated with the bond litigation referenced above, Defendant has denied that coverage is available and has refused to defend and/or indemnify Plaintiff.

COUNT I - BREACH OF CONTRACT

17. Plaintiff realleges the foregoing paragraphs of this Complaint in their entirety.

18. Under The Policy, Defendant expressly agreed to indemnify and defend its insured against claims such as those made in the above-referenced bond litigation.

19. By refusing to provide coverage, Defendant has breached its obligation under The Policy.

20. As a direct and proximate result of Defendant's breach of contract, Plaintiff has suffered damages of \$5,000,000, plus such other and consequential damages as will be proved at trial.

COUNT II - DECLARATORY JUDGMENT

21. Plaintiff realleges the foregoing paragraphs of this Complaint in their entirety.

22. The Policy expressly provides coverage for the claims made against Miller & Schroeder, Inc. and its subsidiaries.

23. Plaintiff is entitled to a declaration that The Policy provides coverage for the claims made, requiring Defendant to indemnify the bankruptcy estate for amounts already paid, defend against pending claims, and indemnify the bankruptcy estate for any allowed claims, up to the limits of coverage.

WHEREFORE, Plaintiff respectfully requests that the Court order that judgment be entered against Defendant as follows:

1. Declaring that The Policy provides coverage for the claims made against M & S and its subsidiaries by the bond holders, and requires Defendant to indemnify and defend the bankruptcy estate;

2. Awarding damages to Plaintiff in the amount of \$5,000,000, plus such other and consequential damages as will be proved at trial;

3. Awarding Plaintiff pre-judgment interest and his costs and disbursements incurred herein; and

4. Granting such other relief as the Court deems just and equitable.

**LEONARD, O'BRIEN
SPENCER, GALE & SAYRE, LTD.**

Dated: October 1, 2003

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